IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 371 OF 2006

Man Singh S/o Bachhe Singh
R/O Vill. Bacce Nagar Teh. Haldwani.
District Nainital ….Petitioner

Versus

1. State of Uttaranchal through collector, Nainital
2. Gram Sabha Bacce Nagar Tehsil Haldwani.
3. Sri Padam Singh S/o Ram Singh
4. Sri Man Singh S/o Ram Singh
5. Sri Trilok Singh S/o Ram Singh
6. Sri Dhan Singh S/o Ram Singh
7. Sri Doogar Singh S/o Ram Singh
   R/o Tehsil Haldwani District Nainital …Respondents

13.04.2006

Sri J.C. Belwal, learned counsel for the petitioner.
Learned Standing Counsel for the respondents.

Hon'ble Rajesh Tandon, J.

Heard Sri J.C. Belwal, Counsel for the petitioner, and Standing Counsel for the respondents.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 31.01.2006 passed by the Additional Chief Revenue Commissioner and further prayed for setting aside the order dated 03.05.2002 passed by the Additional Chief Revenue Commissioner, Nainital.

Briefly stated according to the case of the petitioner, he is the permanent resident of village Bachhe Nagar Tehsil Haldwani and he had been in continuous possession over the said land for more than 20-25 years as owner. The petitioner has filed a revenue suit No. 22/141 of 1989-90 under section 229 B of the U.P.Z.A. and L.R. Act for the declaration of this rights over the said land in the court of Assistant Collector, Bhabar, Haldwani. Father of the

respondent No. 4 to 7 have filed a joint written statement alongwith respondent no. 3 and the suit was decreed by the Assistant Collector Bhaber vide judgment & order dated 24.02.1994. The restoration application was filed under Order 9 Rule 13 C.P.C. alongwith the application under section 5 of Limitation Act by the respondents. The petitioner has filed the objections. The restoration application was rejected vide order dated 31.07.1997 by Assistant Collector, Bhaber. The respondents 3 to 7 have preferred a revision against the aforesaid order before the Commissioner Kumaun, Nainital and the Additional Commissioner (J) Kumaun, Nainital vide his order dated 30.06.98 allowed the appeal and remanded the matter to the Assistant Collector Bhaber District Nainital and directed that the application should also be decided under section 5 of the Limitation Act on merits alongwith the restoration application after giving opportunity of hearing to both the parties. The Additional Commissioner has recorded the finding that the respondent 3 to 7 had knowledge of the fact that the suit was decided against them on 22.06.1994 and therefore the restoration application was barred by time and the order dated 30.06.1998 shows that the competent authority has remanded the matter to revenue Court for deciding the application under section 5 of the Limitation Act after hearing both the parties.

After the creation of the State of Uttaranchal, the said revision was transferred to the Court of Chief Revenue Commissioner, Nainital, the said revision was dismissed in default by the Additional Chief Revenue Commission on 03.05.2002. After dismissal of the revision as well as restoration application, order passed by the Commissioner

directed the matter for rehearing after hearing under limitation act a fresh.

In view of the order dated 30.06.1998 there is no occasion to pass any further order.

Further it is made clear that in pursuance of the remand order passed by the Additional Commissioner, the revenue court is directed to decide it expeditiously.

Consequently, writ petition is disposed of. No order as to costs.

(Rajesh Tandon,J.)

13.04.2006

Jain